IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 213 of 1993

in

SPECIAL CIVIL APPLICATIONNo 2236 of 1993

WITH

LETTERS PATENT APPEAL NO. 214 OF 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G.E.B.

Versus

SWASTIC TEXTILES

Appearance:

MR DEEPAK DAVE FOR MR A.D.OZA for Appellants

MR PC MASTER FOR MR HB SHAH for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE M.C.PATEL

Date of decision: 29/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. The appellants have challenged the common judgement and order dated 21st April 1993 in Special Civil Applications Nos. 2236 of 1993 and 2237 of 1993, by which the learned Single judge quashed the electricity bills issued by the appellants on the respondents on 6-3-1993 and directed that the respondents - consumers should make an application to the Electrical Inspector under the provisions of section 26(6) of the Indian Electricity Act, 1910 and on such application being made, the Electrical Inspector shall decide the dispute in accordance with law within 30 days from the date of the receipt of the meters and each of the respondent consumer shall pay the amount as may be determined by him within 30 days from the date of the communication of its decision to them.

2. In Special Civil Application No. 2236 of 1993 from which Letters Patent Appeal No. 213 of 1993 arises, the respondent - consumer had challenged the supplementary bill at Annexure `D' to that petition, seeking a declaration that the appellants have no power or authority to raise such a demand. The bill at Annexure `D' shows that it was taken out on an allegation that there was theft detected during the checking of the meter which was done on 5th March 1993. In the affidavit in reply filed on behalf of the present appellants, it was alleged that, during checking, it was noticed that the meter was moving 12.87% slow and the officers of the Board using their technical expertise came to a definite conclusion considering the various factual position that the counter gears of the meter are changed by the consumer whereby the actual energy consumed by the consumer was not recorded and the meter was so tampered that it records less consumption than the actual. It was stated that the Board is in a position to point out to the satisfaction of the Court as to how such conclusion of tampering with the meter was arrived at with reasonable certainty by its officers.

3. In Special Civil Application No. 2237 of 1993 from which the Letters Patent Appeal No. 214 of 1993 arises, the respondent - consumer had challenged a similar supplementary bill, which is at Annexure `D' to that petition, in which also the demand was made on the

basis that theft of electricity was detected during the checking of the meter which was done on 5th March 1993. In the copy of the checking report, which is annexed to that petition, in item No. 10, there was a remark that the checking party had found that there was theft of electricity committed by the consumer who was given that meter. In the affidavit in reply filed on behalf of the present appellants it was asserted that the officers were of a definite view that the counter gears of the meter were changed by the consumer and that the meter was so tampered with that it would record less consumption than the actual, and that they will be in a position to demonstrate this position before the Court, if they were allowed to.

4. The learned Single Judge after hearing the learned counsel for both the parties at length, was pleased to give a direction to the respondents consumers to make an application to the Electrical Inspector to decide the dispute that the respondents may raise in their application within the time schedule framed.

5. The learned counsel appearing for the appellants challenged the order of the learned Single Judge on the ground that, in a theft case, the Electrical Inspector has no jurisdiction to proceed with such application under section 26(6) of the Act.

6. The scope of the provision of section 26(6) of the said Act came to be considered in Madhya Pradesh Electricity Board v. Smt. Basantibai, reported in (1988) 1 SCC 23, in which the Court held that a dispute regarding commission of fraud in tampering with the meter and breaking the body seal was outside the ambit of section 26(1) of the said Act and an Electrical Inspector had no jurisdiction to decide such a case of fraud. It was held that, under section 26(6), if the dispute was as to whether the meter is or is not correct, it was to be decided by the Electrical Inspector. In Hyderabad Vanaspathi Ltd. v. A.P. State Electricity Board, reported in (1998) 4 SCC 470, it was held that section 49 empowers the Board to supply electricity on such terms and conditions as it thinks fit and that it may also frame uniform tariffs. The Court held that the terms and conditions of supply were statutory in character and that, they could be invalidated only if they were in conflict with any provisions of the Act or the Constitution. It was held that the terms and conditions of supply have to provide for compensation as well as immediate disconnection to prevent unauthorised user, pilferage or malpractices by the consumers. Such

safeguards have to be provided as a part of conditions of supply so that the consumers will be bound by them. There was clause 39 in that case which was framed by the Board for ascertaining the loss and fixing the compensation by providing a uniform procedure. This is said to be similar to condition 34 of the terms of supply in the present case.

6.1 The Supreme Court agreed with the opinion expressed in the decision of a Division Bench of this Court in Patel Parshottamdas Vanmalidas v. Gujarat Electricity Board, reported in AIR 1987 GUJ. 188, in which it was held that the Board had formulated condition 34 in order to safeguard its interest for the purpose of checking, apart from other things, the theft of electricity. Under the condition, the consumer had a remedy by filing an appeal to an appropriate authority within a specified time. It was held that such a condition was not arbitrary or unreasonable and did not offend any provision of the constitution, nor was the appeal provision illusory.

7. In both the present cases with which we are concerned, there were clear allegations of pilferage and the bills were issued to these consumers on the footing that they had committed theft of electricity. Therefore, the Electric Inspector could not have decided any such issues under section 26(6) of the Act and if at all they wanted to question the bills, they could have challenged them before the appellate committee in consonance with condition 34.

8. In this view of the matter, the impugned order made made in these two matters cannot be sustained and is hereby set aside. Both the appeals stand dismissed. There shall be no orders as to costs. Interim relief, if any, shall stand vacated.

MARCH 29, 2001 [R.K.ABICHANDANI, J.]

[M.C.PATEL, J.]

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